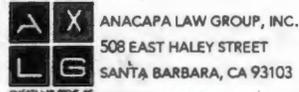


AUG 18 2017



Aug. 15, 2017

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Rick Godber  
Chairman of the Board  
12380 Clark Street  
Santa Fe Springs, CA 90670

C T Corporation Systems  
Registered Agent  
818 West Seventh Street - Suite 930  
Los Angeles, CA 90017

Jeffrey Elder  
President & CEO  
12380 Clark Street  
Santa Fe Springs, CA 90670

Ismael Pedroza Jr  
Director of Environmental Health & Safety  
12380 Clark Street  
Santa Fe Springs, CA 90670

**Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act**

To Whom It May Concern:

I am writing on behalf of California Communities Against Toxics (“CCAT”) regarding violations of the Clean Water Act<sup>1</sup> (“CWA” or “Act”) and California’s General Industrial Storm Water Permit<sup>2</sup> occurring at those industrial facilities owned and operated by Trojan Battery Company (“Trojan” or “Owner”) at and/or near 12380 Clark Street and 9440 Anne Street in Santa Fe Springs, California (collectively “Facilities”). CCAT is a community coalition dedicated to working with our 70 member organizations, and the California communities they represent, to advance environmental justice and pollution prevention. CCAT has members living in and around Santa Fe Springs, which is among those communities suffering the most adverse social, health, economic, and environmental impacts of industrial water and air pollution in the American West. CCAT and its members are deeply concerned with protecting public health and the environment in and around Santa Fe Spring—with a special emphasis on the impacts of toxics like lead (“Pb”) and hexavalent chromium to children.

<sup>1</sup> Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ (“1997 Permit”), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ (“2015 Permit”). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implements the same statutory mandates. CCAT may herein refer to the two versions interchangeably as the “General Industrial Permit” or “Permit.”

This communication (“Notice Letter”) is prepared pursuant to the Act, 33 U.S.C. §§ 1365(a) and (b), and is sent to you and Trojan as the responsible owners and/or operators of the Facilities in order to: 1) detail violations of the Act and General Industrial Permit occurring at the Facilities, and b) provide formal notice that CCAT intends to file an enforcement action in Federal Court against Trojan for violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342.

## I. Background

### A. The Clean Water Act

In response to widespread disregard for the health of our nation’s waters by industrial actors, Congress passed the Act to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act contains an outright prohibition on the discharge of pollutants from any point source into waters of the United States. Recognizing that a *per se* rule against all polluted discharges was unrealistic and overly-broad, Congress included an exception for industrial polluters in Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p), 40 C.F.R. § 122.26(c)(1). As an exception to a general rule, compliance with NPDES permits is strictly enforced.

In California, the United States Environmental Protection Agency (“EPA”) has delegated authority to issue NPDES permits to the State Water Resources Control Board (“State Board”). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board (“Regional Board”) is responsible for issuance and implementation of the Permit in Region 4, which covers the Facilities.

Section 505 of the Act authorizes “any citizen” to file suit in federal court against facilities alleged to be in violation of the Act and/or related permits. 33 U.S.C. § 1365(a). Section 505(b) of the Act requires citizens to give notice to alleged violators at least sixty (60) days before initiating civil action under Section 505(a). 33 U.S.C. § 1365(b). Notice must be given to the alleged violator(s), the EPA Administrator, the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. 40 C.F.R. § 135.2(a)(1).

Unless Trojan takes appropriate action to remedy ongoing violations of the Act, CCAT will file suit in U.S. District Court following the expiration of the 60-day notice period on October, 16 2017. In that action, CCAT will seek civil penalties, injunctive relief, fees and costs. Trojan is subject to civil penalties for all violations of the Act occurring at the Facilities since Aug. 15, 2012.<sup>3</sup> Each separate violation of the Act subjects the violator to a penalty of up to \$51,570 per day per violation. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4.

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<sup>3</sup> Trojan is liable for violations of both the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y 1984) (holding that the Clean Water Act’s legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest*

## B. The Facilities

Trojan's website suggests that the company was founded in 1925 and is among the world's leading manufacturers of lead-acid deep-cycle batteries. CCAT understands that Trojan makes batteries for a variety of applications, including for golf and utility vehicles, renewable energy, transportation, floor machines, aerial work platforms, marine and recreational vehicles.

According to filings with the State of California, the Waste Discharger Identification ("WDID") numbers under which the Facilities are currently registered are 4 19I024324 and 4 19I024325, for the Clark Street and Anne Street facilities respectfully.<sup>4</sup> The Notices of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") filed with the State Board and Regional Board certify that both Facilities are categorized under the Standard Industrial Classification ("SIC") 3691 ("Storage Batteries").

According to information and belief, both Facilities are subject to regulation by the South Coast Air Quality Management District ("Air District") under Rule 1420.2 – Emissions Standards for Lead from Metal Melting Facilities, which applies to facilities that have an estimated annual lead throughput of greater than 100 tons per year.

### 1. *Clark Street*

The Clark Street Facility is Trojan's corporate headquarters, and also the site of one of the companies four U.S.-based manufacturing facilities. According to the Storm Water Pollution Prevention Plan ("Clark SWPPP") filed by Ismael Pedroza, Jr. on 06.29.2015, "[t]he Clark St. Facility manufactures Lead Acid Batteries. The activities in the Clark St facility include but are not limited to: melting of lead, assembly of battery components, filling batteries with electrolyte, charging, etc." Clark SWPPP p. 1. CCAT understand this document to be the current SWPPP for the Clark Street Facility. Mr. Pedroza further certifies that "[s]torm run-off is conveyed through the storm water conveyance system and is controlled by 1 outfall with closed valves." Clark SWPPP p. 4. "All manufacturing activities (battery assembly) occur inside the plant. Lead Fumes and Lead Oxide are vented through process hoods into Baghouses. Sulfuric Acid Mist generated during the charging cycle is vented through Acid Mist Eliminators. Air Pollution Control Devices such as the Baghouse and Acid Mist Eliminators vent to atmosphere." Clark SWPPP p. 5. The Clark SWPPP also indicates that "Metal Grinding" occurs on site. *Id.* The Facility stores lubricants, paints, solvents, water treatment chemicals as well as process water (containing lead/lead compounds), which is "stored in underground clarifiers and treatment tanks." Clark SWPPP p. 3. The SWPPP suggests that Trojan relies on a host of "sloped" areas to manage both contaminant release and exposure.

### 2. *Anne Street*

According to the Storm Water Pollution Prevention Plan ("Anne SWPPP") on file with

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*Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

<sup>4</sup> At least one of the Facilities was registered under a different WDID in the State Board permit tracking system.

the State of California and last revised on 12.19.2016, the Anne Street Facility “manufactures plates for Lead Acid Batteries. It also houses a Barton Oxide System and storage silos. The activities in the Ann St facility include but are not limited to: melting of lead, producing lead oxide, & pasting.” Anne SWPPP p.1. CCAT understand this document to be the current SWPPP for the Anne Street Facility. “Storm water run-off generally flows as sheet flow across the site towards the entrance. The majority of storm water from the site flows through filter socks before entering the sump in the driveway, where it is pumped to the truck well in the loading dock. Storm water from the loading dock drainage area flows across that drainage area via sheet flow through filter socks and into the truck well, combining with storm water from the sump. The combined storm water is then pumped out the entrance (Outfall 1).” Anne SWPPP p. 4. “All manufacturing activities (lead oxide production, grid and plate production) occur inside the plant. Lead Fumes and Lead Oxide are vented through process hoods and into Baghouses. Sulfuric Acid Mist generated during the mixing process is vented through a Fume Scrubber. Air Pollution Control Devices such as the Baghouse and Fume Scrubber vent to the atmosphere. The Baghouse has an efficiency of 99.97% and the Fume Scrubber efficiency is estimated to be 90%.” Anne SWPPP p. 4-5. In an apparent internal contradiction, the Anne SWPPP states, “storm water conveyance system is controlled through a valve; after the first 2 hours of a storm, the valve is closed and the storm water is diverted to the street.” Anne SWPPP p. 5.

### C. Receiving Waters

According to the Clark SWPPP and Anne SWPPP, stormwater discharges and non-stormwater discharges from the Facilities are received by Reach 2 of the San Gabriel River (“River”), and by Coyote Creek and then to the River, respectfully. *See e.g.* Clark SWPPP p. 4. The River is listed by EPA and the State Board under section 303(d) as impaired for both Pb and pH. The River ultimately empties into the Pacific Ocean at Seal Beach, just West of the Seal Beach National Wildlife Refuge (see IMAGE 1 below). Collectively, Coyote Creek, the River and Pacific Ocean are referred to herein as the “Receiving Waters,” unless context suggests otherwise.

IMAGE 1



The Regional Board issued the “Water Quality Control Plan—Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura County” (“Basin Plan”). *See*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.html](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.html). The Basin Plan identifies Beneficial Uses of the Receiving Water, which include: Water Contact Recreation (“REC-1”), Non-Contact Water Recreation (“REC-2”), Rare, Threatened, or Endangered Species (“RARE”), Wildlife Habitat (“WILD”), Warm Freshwater Habitat (“WARM”), Ground Water Recharge (“GWR”), Municipal and Domestic Supply (“MUN”), Industrial Service Supply (“IND”), and Industrial Process Supply (“PROC”). *See* Basin Plan, Table 2-1.

Polluted discharges from the Facilities cause and/or contribute to the degradation of these already impaired surface waters, beaches, and aquatic dependent wildlife. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro invertebrate and invertebrate species. The public, both tourists and residents alike, make extensive use of the Receiving Waters for water contact sports, fishing, non-contact recreational, and aesthetic opportunities, such as wildlife observation, and sunbathing. Polluted discharges from the Facilities expose many people to contaminants that threaten public health and welfare, and impair natural ecosystems that depend on the Receiving Waters. Polluted storm water and non-storm discharges harm the special aesthetic, economic and recreational significance the Receiving Waters have for the public, including CCAT members.

## **II. Storm Water Permitting and Enforcement**

### **A. Storm Water Permitting**

The Act prohibits any discharges of storm water associated with industrial activities (and authorized non-storm water discharges) that have not been subjected to Best Available Technology Economically Achievable (“BAT”) for toxic<sup>5</sup> (or non-conventional) pollutants, and Best Conventional Pollution Control Technology (“BCT”) for conventional pollutants<sup>6</sup> (33 U.S.C. §§ 1311(b)(2)(A), (B)). However, regulators recognize the strain that strict application of the standards would impose on industry, as well as the practical challenge of defining and enforcing the standards.

Thus, rather than requiring the specific application of BAT or BCT techniques to each individual discharge of storm water, the State Board and EPA fashioned a far more flexible compliance regime under which compliance with the terms of conditions of the General Industrial Permit serves as a proxy for compliance with the Act. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Compliance with the General Industrial Permit, therefore, constitutes compliance with the Act for purposes of storm water discharges. Conversely, failures to comply with the Permit’s terms and conditions constitute violations of the Act. *See* 1997 Permit, Section C(1); *see also* 2015 Permit, Section XXI(A).

In order to comply with the BAT/BCT mandate embodied in the Permit, owners and operators must consistently engage in a multi-prong compliance strategy, which for years was

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<sup>5</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.

<sup>6</sup> Conventional pollutants include Total Suspended Solids, Oil and Gas, pH, biochemical oxygen demand and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or non-conventional.

referred using a shorthand reference—the “iterative” approach. CCAT prefers to think of the process as a feedback loop that includes three independent, but mutual-reinforcing actions: i) planning and design, ii) on-the-ground implementation, and iii) monitoring and validation.

Each of the three prongs is a necessary condition for compliance with the Permit and Act. Without executive planning and design, a facility’s staff is highly unlikely to implement BMPs that adequately prevent or limit polluted discharges. Without consistent and reliable on-the-ground implementation, no amount of expert planning will prevent and reduce pollutants in stormwater discharges. And failures to collect data leaves an owner/operator without essential information about the efficacy of pollution control measures, which prevents an owner/operator from re-engaging in the planning and design of effective corrective actions. Compliance does necessitate that each prong be completed perfectly, but all must be consistently and sincerely pursued.

The Permit’s principal mechanisms for ascertaining compliance with the Act’s BAT/BCT mandate, therefore, are to require both the preparation and implementation of a comprehensive SWPPP that serves as the primary planning and design document. The SWPPP must accurately evaluate the site’s pollutant sources, and then define Best Management Practices (“BMPs”) designed to prevent and reduce polluted runoff. The SWPPP must also describe a Monitoring and Reporting Program (“M&RP”) that emphasizes the collection and analysis of stormwater discharges to inform owners/operators regarding BMP effectiveness, i.e. validation. Because it is virtually impossible for the public, the Regional Board, the State Board, or EPA to accurately assess on-the-ground implementation, a complete SWPPP and data from the M&RP serve as third parties’ only source for measuring compliance with the Permit and Act.

Each facility must prepare a SWPPP that complies with all provisions of Section X of the 2015 Permit. *See* 2015 Permit, Section X.C.2. CCAT draws Trojan’s attention to several specific provisions it believes serve as the foundation of a legally adequate and effective SWPPP. First and foremost, the SWPPP must include a comprehensive description of potential pollutants sources, which must include a list of pollutants likely to be present in industrial stormwater, and the effectiveness of existing BMPs to reduce or prevent these pollutants in discharges. 2015 Permit, Section X.G.1-2. Second, the SWPPP must include a full and complete description of both minimum and advanced BMPs to be implemented at the facility. 2015 Permit, Section X.H.1-2. According to the State Board, the 2015 Permit “requires Dischargers to implement a set of minimum BMPs[, which] in combination with any advanced BMPs necessary to reduce or prevent pollutants in industrial storm water discharges, serve as the basis for compliance with this General Permit’s technology-based effluent limitations and water quality based receiving water limitations.” *See* Summary of Significant Changes for the General Permit for Storm Water Associated with Industrial Activity Order 2014-0057-DWQ at p. 1. Third, the SWPPP must include a site map, which is essential not only for planning and design of BMPs, but also for translating plans into effective on-the-ground implementation. 2015 Permit, Section X.E.

The M&RP must be designed and implemented to test the effectiveness of BMPs—both as designed and as implemented. The emphasis of the M&RP must be on collecting stormwater samples and analyzing those samples for pollutants associated with a facility’s industrial activity. All facilities must analyze each stormwater sample for three sets of pollutants—basic parameters,

industry-specific parameters, and site-specific parameters. Basic parameters are the standard pollutants every industrial facility must test for, which are Total Suspended Solids (“TSS”), pH, Specific Conductance (“SC”),<sup>7</sup> and either Total Organic Carbon (“TOC”) or Oil and Grease (“O&G”). 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b). Industry-specific parameters are set in relationship to SIC codes and include pollutants commonly associated with specific industrial operations. 1997 Permit, Section B(5)(c)(iii); 2015 Permit, Section XI(B)(6)(d). Lastly, site-specific parameters are those pollutants specifically associated with processes and activities at a specific facility. 1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section XI(B)(6)(c).

Facility owners and operators must then compare sampling data from stormwater analytics to numeric values (“Benchmarks”) published by the EPA that serve as objective measures for evaluating whether a facility’s BMPs achieve the BAT/BCT standards of the Act. *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000) (as modified effective May 9, 2009). Under certain conditions, a facility will also be required to compare analytical data to limits (both numeric and narrative) established elsewhere, including in the Basin Plan and the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 (“CTR”).<sup>8</sup>

In response to a general contempt for the *voluntary* approach embodied in the 1997 Permit, the State Board formalized the *iterative* process in the 2015 Permit with the establishment of an Exceedance Response Action (“ERA”) requirement—a compulsory BMP-review process. *See* 2015 Permit Factsheet at 55-60. The ERA requirement codifies the feedback loop referred to above by mandating that facility operators/owners engage in corrective planning and design when data demonstrates pollutant concentrations exceed Numeric Action Levels (“NALs”). 2015 Permit, Section XII. NALs are similar to benchmarks, but are generally more lenient and represent averaged concentrations from multiple discharge points over an entire year. NALs are intended as triggers for the ERA program’s reporting requirement. And while exceedances of a NAL demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the State Board did not intend for NALs to represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.<sup>9</sup>

## B. Citizen Enforcement

In designing the Act, Congress acknowledged “the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act].” 116 Cong.

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<sup>7</sup> The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

<sup>8</sup> Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

<sup>9</sup> “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

Rec. 33,104 (1970) (statement of Sen. Hart).<sup>10</sup> In anticipating this challenge, Congress crafted Section 505 to encourage citizen plaintiffs to act as private attorney's general. Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976). President Trump's EPA has stated that "[c]itizen enforcement actions are an integral component of the Acts' overall enforcement schemes. The United States values the contribution that responsibly-pursued citizen suits make towards protecting our nation's air and waters."

Citizen plaintiffs also fill an essential economic role. Water pollution results in inefficient economic outcomes caused by market failures that are frequently associated with common pool resources like surface waters and oceans. Enforcement actions under Section 505 help correct these market failures by forcing firms to internalize the social welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society. Society at large pays handsomely when business owners fail to operate efficiently. The most common costs are associated with human illness (health care costs, lost productivity, etc.), habitat loss, ecosystem service disruption (e.g. clean irrigation water for agriculture), wildlife disturbances, and detrimental impacts to tourism.

### C. Standards Applicable Under the Act and Permit<sup>11</sup>

As described above, the Act prohibits discharging pollutants to waters of the United States from a point source, except as permitted under an NPDES permit, such as California's General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 1997 Permit and the 2015 Permit both require that dischargers meet all applicable provisions of the Act's Sections 301 and 402.

#### 1. *Effluent Limitation*

The Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. 1997 Permit, Section B(3), 2015 Permit, Section V(A); *see also* 1997 Permit, Section A(8); *see also* 2015 Permit, Section X(H).

#### 2. *Receiving Water Limitations*

The Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS"), as

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<sup>10</sup> *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

<sup>11</sup> The description of standards applicable under the Act and Permit contained herein are not intended as a comprehensive recitation of every potential requirement, nor a complete description of each standard addressed. Rather, this section of the Notice Letter is intended to summarize the standards most relevant to facilities like those operated by Trojan.

defined in, *inter alia*, the Basin Plan.<sup>12</sup> 1997 Permit, Section C(2); 2015 Permit, Section VI(A). Discharges that contain pollutants in excess of an applicable WQS violate these Receiving Water Limitations. The Receiving Water Limitations also prohibits storm water discharge (and authorized non-storm water discharges) to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Thus, any discharge that contains pollutant concentrations exceeding levels that adversely impact aquatic species, the environment, and/or human health also constitute violations of the Permit.

### 3. *Discharge Prohibitions*

The Permit also contains an outright prohibition on “non-storm water discharges” (“NSWD”) directly or indirectly to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B). The Discharge Prohibitions also proscribe storm water discharges that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the State Water Code. 1997 Permit, Section A(2); 2015 Permit, Section III(C).

### 4. *Monitoring and Reporting Requirements*

The Permit requires facility operators develop and implement a storm water M&RP prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility’s storm water discharges to ensure BMPs are effective in maintaining compliance with the Permit’s Effluent Limitations, Receiving Water Limitations and Discharge Prohibitions. *See* 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). A legally adequate M&RP ensures that BMPs achieve BAT/BCT, and is evaluated at least annually.

The principal M&RP requirements imposed by the 1997 Permit and 2015 Permit are substantially identical. *Compare* 1997 Permit, Sections B(3)-(16) to 2015 Permit, Sections X(I) and XI(A)-(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit, Section B(3). The 2015 Permit increased the frequency of visual observations to monthly, and requires that observations be completed at the same time samples are collected. 2015 Permit, Section XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit, Section B(4); 2015 Permit, Section XI(A)(2). Dischargers must document observations, and any responses taken to address problems observed, including revisions made to the SWPPP. 1997 Permit, Sections B(3)-(4); 2015 Permit, Sections XI(A)(2)-(3). The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations from at least two storm events under the 1997 Permit, and at least 4 storm events under the 2015 Permit<sup>13</sup>—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit, Sections B(5), (7); 2015 Permit, Sections XI(B)(1)-(5). All sampling analysis data must

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<sup>12</sup> Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

<sup>13</sup> The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

be submitted via SMARTS within thirty (30) days of obtaining results. 2015 Permit, Section XI(B)(11).

### III. Violations of the Clean Water Act and the Storm Water Permit

In the years since enrolling in the Permit, Trojan has failed to carry out its obligations under both the Permit and Act. As discussed in further detail below, the Facilities are in ongoing violation of the Permit, and violations span both the 1997 Permit and 2015 Permit. Specifically, the Facilities consistently discharged pollutants in violation of the Permit’s Effluent Limitations, Receiving Water Limitations, and Discharge Prohibitions; failed to develop, implement, and/or update a legally adequate SWPPP to ensure the development and implementation of BMPs that achieve BAT/BCT; and failed to comply with the Permit’s monitoring and reporting requirements. Trojan is subject to daily civil penalties for each violation of the Clean Water Act detailed below occurring since August 15, 2012.

#### A. Discharges of Storm Water in Violation of Effluent Limitations

Information available to CCAT indicates that the Facilities have failed and continue to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT/BCT. While data from the Anne Street Facility are more concerning, both Facilities have a consistent pattern of exceeding multiple parameters over the last decade, most specifically for zinc (“Zn”) and Pb. As noted above, Benchmarks are relevant and objective standards for evaluating whether BMPs designed and implemented by a permittee achieve BAT/BCT as required by the Permit’s Effluent Limitations. The data summarized below in tables 1, 2, 3 and 4 demonstrate that Trojan *has discharged and continues to discharge* pollutants well in excess of Benchmark values; and establish that both Facilities are in continuous violation of the Permit and Act.

**TABLE 1**

CLARK STREET STORMWATER DATA AS SUMMARIZED BY THE REGIONAL BOARD IN A 2013 NOTICE OF VIOLATION

LINE	REPORTING YEAR	PARAMETER	CONCENTRATION (mg/L)	BENCHMARK/ NAL (mg/L)	DISCHARGE POINT
1	2008-2009	Pb	1.9	0.0816/0.262	unknown
2	2008-2009	Zn	0.61	0.117/0.26	unknown
3	2009-2010	Pb	0.38	0.0816/0.262	unknown
4	2009-2010	Zn	0.14	0.117/0.26	unknown
5	2009-2010	Pb	4.6	0.0816/0.262	unknown
6	2009-2010	Zn	1.0	0.117/0.26	unknown
7	2010-2011	Pb	0.38	0.0816/0.262	unknown
8	2010-2011	Zn	1.3	0.117/0.26	unknown
9	2010-2011	Pb	0.32	0.0816/0.262	unknown
10	2010-2011	Zn	0.12	0.117/0.26	unknown
11	2011-2012	Pb	0.56	0.0816/0.262	unknown
12	2011-2012	Zn	0.4	0.117/0.26	unknown
13	2011-2012	Pb	0.19	0.0816/0.262	unknown
14	2011-2012	Zn	0.19	0.117/0.26	unknown
15	2012-2013	Pb	0.12	0.0816/0.262	unknown
16	2012-2013	Zn	0.23	0.117/0.26	unknown

17	2012-2013	Pb	1.3	0.0816/0.262	unknown
18	2012-2013	Zn	1.1	0.117/0.26	unknown

**TABLE 2**

CLARK STREET FACILITY STORMWATER DATA SUBMITTED TO STATE OF CALIFORNIA BETWEEN 2012 AND 2017

LINE	SAMPLE DATE	PARAMETER	OBSERVED CONCENTRATION	BENCHMARK/ NAL mg/L	DISCHARGE POINT
<b>2012-2013</b>					
1	11.30.12	Pb	1.3	0.0816/0.262	unknown
2	11.30.12	Zn	1.1	0.117/0.26	unknown
3	01.24.13	Pb	0.12	0.0816/0.262	unknown
4	01.24.13	Zn	0.23	0.117/0.26	unknown
<b>2013-2014</b>					
<i>No samples collected or analyzed between Oct. 2013 and Feb. 2014</i>					
5	02.27.14	Pb	0.12	0.0816/0.262	unknown
6	02.27.14	Zn	0.26	0.117/0.26	unknown
<b>2014-2015</b>					
7	12.02.14	Pb	2.6	0.0816/0.262	1
8	12.02.14	Zn	0.74	0.117/0.26	1
9	12.02.14	Pb	0.55	0.0816/0.262	2
10	12.02.14	Zn	0.47	0.117/0.26	2
11	12.12.14	Pb	0.73	0.0816/0.262	1
12	12.12.14	Zn	0.49	0.117/0.26	1
13	12.12.14	Pb	0.15	0.0816/0.262	2
14	12.12.14	Zn	0.21	0.117/0.26	2
<i>No samples collected or analyzed between Dec. 2014 and April 2015</i>					
<b>2015-2016</b>					
15	12.22.15	Pb	0.10	0.0816/0.262	unknown
16	12.22.15	Zn	0.20	0.117/0.26	unknown
17	02.17.16	Pb	0.17	0.0816/0.262	unknown
18	02.17.16	Zn	0.20	0.117/0.26	unknown
<b>2016-2017</b>					
<i>No samples collected or analyzed between Oct. 2016 and Feb. 2017</i>					
19	02.06.17	Pb	0.04	0.0816/0.262	unknown
20	02.06.17	Zn	0.09	0.117/0.26	unknown
21	02.17.17	Pb	0.09	0.0816/0.262	unknown
22	02.17.17	Zn	0.10	0.117/0.26	unknown

The data summarized in Tables 1 and 2 tell a very clear story—the Clark Street Facility has failed to implement stormwater control measures that achieve BAT/BCT for Zn and Pb. Only once since 2008, on 02.26.17, has the concentration of Pb from the Clark Street Facility met the EPA Benchmark. And 11 days later, concentrations of Pb in the Facility’s stormwater more than doubled, suggesting that implementation of adequate BMPs is not to account for the first reading.

While it is possible to interpret improvements in 2016 and 2017 as evidence of improved stormwater management, CCAT has thoroughly analyzed the data, comparing the apparent randomness against storm event histories, and concluded that improvements are unlikely attributable to efforts by Trojan. Indeed this pattern is repeated since at least 1994. Furthermore,

CCAT believes these data understate actual pollutant concentrations for many of the storm event samples.

For example, on March 1, 2014 it may have seemed reasonable to assume that the back-to-back 0.12 mg/L Pb concentrations (*see* Table 2, lines 3 and 5) represented improvements in Trojan’s storm water management. However, the first sample taken in the 2014-2015 storm water year (*see* Table 2, line 7) demonstrates otherwise—an exceedance of the Pb Benchmark by more than 32 times—and twice the level reported in the first sample taken in the 2012-2013 storm water year (*see* Table 2, line 1). These relationship between high and low concentrations makes clear that either: a) other factors were likely responsible for the lower data readings; or b) Trojan is not consistently implementing adequate BMPs in violation of the Permit.

Moreover, the data on Table 2, lines 1, 3 and 5 very likely understate actual concentrations of Pb in discharges from the Facility. First, it rained more than a quarter of an inch the day before the 11.30.12 sample was collected, likely washing significant amounts of pollutants off the Facility prior to the sample being taken. This means that actual lead levels in the Facility’s stormwater discharges were higher than the excessive 1.3 mg/L of Pb. Also, the 0.27 inches of rain on 11.29.12 disqualifies the 11.30.12 storm event for Permit purposes. Similarly, the 0.12 mg/L Pb reading for 1.24.13 is misleading, as it reflects the concentration of Pb in water being discharges are 10:08am, after it rained for almost 10 hours before the sample was collected (a majority of the rain falling between 4am and 9am).

Similarly, the samples collected on 02.06.17 and 02.17.17 represent concentrations of Zn and Pb in the Facility’s stormwater discharge from the 16<sup>th</sup> and 18<sup>th</sup> storm event of the winter, i.e. more than 9 inches of rain from 15 different storm events washed pollutants from the Facility prior to recording these low numbers. This is especially enlightening given that only 11 days of industrial activity resulted in a more than doubling of Pb concentrations from 0.04 (below the Benchmark) to 0.09 (above the Benchmark).

Considering these data and analyses, CCAT is confident that the Clark Street Facility has failed to implement BMPs that achieve BCT/BAT as required by the Permit and Act.

**TABLE 3**

ANNE STREET STORMWATER DATA AS SUMMARIZED BY THE REGIONAL BOARD IN A 2013 NOTICE OF VIOLATION

LINE	REPORTING YEAR	PARAMETER	OBSERVED CONCENTRATION	BENCHMARK/NAL	DISCHARGE POINT
1	2008-2009	Pb	0.10	0.0816/0.262	unknown
2	2008-2009	Zn	0.61	0.117/0.26	unknown
3	2009-2010	Pb	4.6	0.0816/0.262	unknown
4	2009-2010	Zn	0.50	0.117/0.26	unknown
5	2009-2010	Pb	3.1	0.0816/0.262	unknown
6	2009-2010	Zn	0.84	0.117/0.26	unknown
7	2010-2011	Pb	1.3*	0.0816/0.262	unknown
8	2010-2011	Zn	1.0*	0.117/0.26	unknown
9	2010-2011	Pb	2.3**	0.0816/0.262	unknown
10	2010-2011	Zn	0.71**	0.117/0.26	unknown
11	2011-2012	Pb	3.7	0.0816/0.262	unknown
12	2011-2012	Zn	1.5	0.117/0.26	unknown

13	2011-2012	Pb	4.4	0.0816/0.262	unknown
14	2011-2012	Zn	1.9	0.117/0.26	unknown
15	2012-2013	Pb	1.2	0.0816/0.262	unknown
16	2012-2013	Zn	0.62	0.117/0.26	unknown
17	2012-2013	Pb	0.16	0.0816/0.262	unknown
18	2012-2013	Zn	0.40	0.117/0.26	unknown

\*- based on file review at Regional Board, sample from 630am on 10.04.10

\*\* - based on file review at Regional Board, sample from 730am on 12.20.10

**TABLE 4**

**ANNE STREET FACILITY STORMWATER DATA SUBMITTED TO STATE OF CALIFORNIA BETWEEN 2012 AND 2017**

LINE	SAMPLE DATE	PARAMETER	OBSERVED CONCENTRATION	BENCHMARK/ NAL	DISCHARGE POINT
<b>2012-2013</b>					
1	11.30.12	Pb	0.16	0.0816/0.262	unknown
2	11.30.12	Zn	0.40	0.117/0.26	unknown
3	01.24.13	Pb	1.2	0.0816/0.262	unknown
4	01.24.13	Zn	0.62	0.117/0.26	unknown
<b>2013-2014</b>					
<i>No samples analyzed between Oct. 2013 and Feb. 2014</i>					
5	02.27.14	Pb	2.4	0.0816/0.262	unknown
6	02.27.14	Zn	0.88	0.117/0.26	unknown
<b>2014-2015</b>					
7	12.02.14	Pb	2.6	0.0816/0.262	unknown
8	12.02.14	Zn	0.74	0.117/0.26	unknown
9	12.12.14	Pb	0.73	0.0816/0.262	unknown
10	12.12.14	Zn	0.49	0.117/0.26	unknown
<i>No samples analyzed between Dec. 2014 and April 2015</i>					
<b>2015-2016</b>					
11	12.22.15	Pb	2.7	0.0816/0.262	unknown
12	12.22.15	Zn	0.52	0.117/0.26	unknown
13	02.17.16	Pb	0.25	0.0816/0.262	unknown
14	02.17.16	Zn	0.42	0.117/0.26	unknown
<b>2016-2017</b>					
<i>No samples analyzed between Oct. 2016 and Feb. 2017</i>					
15	02.06.17	Pb	0.37	0.0816/0.262	unknown
16	02.06.17	Zn	0.35	0.117/0.26	unknown
17	02.22.17	Pb	0.56	0.0816/0.262	unknown
28	02.22.17	Zn	0.17	0.117/0.26	unknown

The Anne Street Facility's data establishes that Trojan has failed to implement stormwater control measures that achieve BAT/BCT for Zn and Pb. The data have a similarly odd cycling between very high and relative lower pollutant concentrations, though overall much higher than at the Clark Street Facility, i.e. the Anne Street Facility has only reported Pb concentrations meeting the NAL value twice in the last 5 years, and never has it met the Benchmark limit. These data, like the Clark Street Facility's data, suggest that something other than Trojan's efforts yield sporadic improvements. For example, in November of 2012 the Anne Street Facility reports a Pb concentration of only 0.16 mg/L, well within the NAL value. However, only two months later it records a value that is orders of magnitude greater than the NAL, and does not return to within NAL values until February 2016.

And like the Clark Street Facility's data, the 2017 data may appear at first glance to evidence improvements over the two prior winters. However, no such conclusion can be drawn when one considers that the 12.02.14 and 12.22.15 Pb data—2.6 mg/L<sup>14</sup> and 2.7 mg/L respectively—reflect concentrations from those winter's early rains, while the 02.06.17 data reflects concentrations discharges from a facility that experienced as many as 15 heavy rains. CCAT has seen this pattern in the past. During the dry months, aerial deposition of contaminants builds up on roofs, in parking lots and other surfaces, and is then washed into surface waters during first few rains. Assuming this pattern holds true for Trojan, CCAT is not surprised to see that data indicate lower concentrations of contaminants in discharges the later in winter the sample is collected.

Each time the Facilities discharge polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). CCAT puts Trojan on notice that it violates the Effluent Limitations every time it discharges storm water without adequate BMPs. *See* Exhibit 2 (setting forth dates of significant rain events).<sup>15</sup> These discharge violations are ongoing and will continue every time either of the Facilities discharge polluted storm water without developing and/or implementing BMPs consistent with BAT/BCT standards. CCAT may supplement and update the data presented above as additional data becomes available. Trojan is subject to civil penalties for all violations of the Clean Water Act occurring since August 15, 2012.

CCAT puts Trojan on notice that the 2015 Permit Effluent Limitation V.A is a wholly independent requirement with which all facilities must comply, and that carrying out the ERA process triggered by exceedances of NALs does not amount to compliance with Effluent Limitation V.A. While exceedances of a NAL demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the State Board did not intend for NALs to represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.<sup>16</sup>

#### B. Discharges of Storm Water in Violation of Receiving Water Limitations and Discharge Prohibitions

As detailed above, the Permit's Receiving Water Limitations prohibit storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Because Benchmarks are the pollutant concentrations above which EPA determined represent a level of concern (i.e. a concentration at which a storm water discharge could potentially impair,

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<sup>14</sup> The 2.6 mg/L of Pb in this reading is especially concerning given that the report submitted by Trojan to the State indicates the sample was collected on a morning after it had rained all night (“llu[v]io total la noche”), i.e. the concentration during the first hours of the rain event were almost certainly substantially higher.

<sup>15</sup> A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

<sup>16</sup> “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

or contribute to impairing, water quality or affect human health from ingestion of water of fish), each of the violations detailed above constitute independent violations of the Permit's Receiving Water Limitations.

CCAT puts Trojan on notice that the 2015 Permit Receiving Water Limitations are separate, independent requirements with which the Facilities must comply, and that carrying out the iterative process triggered by exceedances of the NALs do not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of the Permit's Receiving Water Limitations.<sup>17</sup> The violations of the Receiving Water Limitations described in this Notice Letter are ongoing even if Trojan submits an adequate ERA response pursuant to Section XII of the 2015 Permit.

Finally, each of the violation of the Receiving Water Limitations described above constitute an independent violation of the Permit's Discharge Prohibition by causing and threatening to cause pollution, and contamination of the Receiving Waters. *See* 1997 Permit, Section A.1; 2015 Permit, Section III.C. CCAT puts Trojan on notice that the Permit's Receiving Water Limitations and Discharge Prohibitions are violated each time storm water discharges from the Facilities. *See e.g.*, Exhibit A. Each time the Facilities discharge polluted storm water in violation of the Permit's Receiving Water Limitations and Discharge Prohibitions is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time the Facilities discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. CCAT may supplement and update the data presented above as additional data becomes available. Trojan is subject to civil penalties for all violations of the Clean Water Act occurring since August 15, 2012.

### C. Failure to Prepare, Implement, Review and Update an Adequate SWPPP

As discussed above, the initial step to compliance with the Permit and Act is planning. Recognizing the importance of planning, the State Board has designated the SWPPP as the cornerstone of compliance with the NPDES Permit. Sections A.1 and E.2 of the 1997 Permit require dischargers to develop and implement a SWPPP that meets all of the requirements prior to beginning industrial activities. The objective of the SWPPP is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges (and authorized non-stormwater discharges) from a facility, and then develop BMPs to reduce or prevent pollutant concentrations in storm water discharges. 1997 Permit, Section A.2, 2015 Permit, Section X.C. BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit, Sections A(9)-(10), 2015 Permit, Section X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is an independent violation

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<sup>17</sup> "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

of the General Permit. 2015 Permit Factsheet I(1).

Sections A.3-A.1. of the 1997 Permit set forth the requirements for a SWPPP. The SWPPP is an executive planning document, and includes: a written assessment of potential sources of pollutants in stormwater runoff, control measures that will be implemented at the facility to minimize the discharge of these pollutants in runoff from the site, and a description of the monitoring program that will be employed to determine the effectiveness of the planning process and guide corrective actions. Sections X.D – X.I of the 2015 Permit set forth essentially the same SWPPP requirements, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT. As described above, a suit of effective BMPs serve as the basis for compliance with the Permit’s technology-based effluent limitations. *See* 2015 Permit, Section X.H. The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. 2015 Permit, Sections X.G and X.H.

1. *Deficiencies in Clark Street Facility SWPPP*

The first, and most concerning, legal deficiency in the Clark Street Facility’s SWPPP is its failure to comply with the requirement to identify and describe pollutants and their sources. While the SWPPP contains a table that is an amalgamation of various requirements outlined in Section X of the 2015 Permit, the SWPPP does not comply with Section X.G.1 or X.G.2. Sections X.G.1 and X.G.2 serve as the foundation for a legally adequate SWPPP, because the design of effective BMPs must be build on the identification and description of pollutants and pollutant sources at a facility.

The second legal deficiency in the Clark Street Facility’s SWPPP is its failure to adequately describe BMPs. The 2015 requires more robust and comprehensive BMP descriptions than did the 1997 Permit, and yet the Clark Street Facility’s SWPPP often only identifies a BMP by name, and at times provides cursory descriptions. However, the SWPPP does not contain the level of detail required by the 2015 Permit Sections X.H.4 and X.H.5.

Third, the Clark Street Facility’s SWPPP does not include sufficient BMPs. For example, there are no housekeeping BMPs associated with the metal grinding and finishing operations that are a source of fugitive metal dust/particulates. This deficiency is corroborated by the data in Tables 1, 2, 3 and 4 above.

Forth, following the 2014-2015 wet season in which the Facility noted deficiencies in its BMPs (see Forms 4 and 5), Trojan made no commensurate modifications to the SWPPP to correct known BMP problems. *See* 2014-2015 Clark Street Annual Report, Forms 4 and 5.

Lastly, the Clark Street Facility’s site map does not appear to contain any of the elements required by the 1997 or 2015 Permit. CCAT thought that this error was the result of poor copying by administrative staff, but upon reviewing the hard copy files available at the Regional Board offices, CCAT learned that the file available on SMARTS matches the hard copy file submitted by Trojan to the Board. The site map available to the State Board, Regional Board and the public is woefully deficient and fails to comply with the Permit.

Importantly, the Clark Street Facility failed to certify and submit an ERA Level 1 Report by January 1, 2017, and failed to make appropriate revisions to the SWPPP as part of corrective actions responsive to Zn exceedances. These deficiencies constitute two independent violations of the Permit and Act for which Trojan is liable on a daily basis.

## 2. *Deficiencies in Anne Street Facility SWPPP*

The first, and most concerning, legal deficiency in the Anne Street Facility's SWPPP is its failure to comply with the requirement to identify and describe pollutant sources and pollutants. While the SWPPP contains a table that is an amalgamation of various requirements outlined in Section X of the 2015 Permit, the SWPPP does not comply with Section X.G.1 or X.G.2. Sections X.G.1 and X.G.2 serve as the foundation for a legally adequate SWPPP, because the design of effective BMPs must be built on the identification and description of pollutants and pollutant sources at a facility.

The second legal deficiency in the Anne Street Facility's SWPPP is its failure to adequately describe BMPs. The 2015 requires more robust and comprehensive BMP descriptions than did the 1997 Permit, and yet the Anne Street Facility's SWPPP often only identifies a BMP by name, and at times provides cursory descriptions. However, the SWPPP does not contain the level of detail required by the 2015 Permit Sections X.H.4 and X.H.5

### D. Violations of Permit's Monitoring and Reporting Requirements

Both Facilities have failed to comply with the Permits monitoring and reporting requirements. First, both Facilities have failed to sample storm water discharges at required times. For example, the Anne Street Facility did not take or analyze any samples over more than a year between 12.12.14 and 12.22.15. Similarly, the Clark Street Facility failed to collect a stormwater sample from the first qualifying storm event of the 2013-2014 wet season, and in fact did not collect its only sample of the year until the very end of the winter on 2.27.14. Additionally, the Clark Street Facility did no testing in the winter of 2016, and again did not collect samples until February. Second, the Clark Street Facility did not submit or certify an Annual Report for the 2015-2016 wet season. Lastly, Trojan has repeatedly filed false Annual Reports, in which it fails to acknowledge the storage and containment of storm water on site prior to discharge. *See e.g.* Clark Street Facility Annual Report, Question E.8.

In addition, Trojan has failed report noncompliance with the Permit at the time an Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C.11.d. Trojan has not reported non-compliance or corrective actions as required.

As such, Trojan has been and continues to be in daily violation of the Permit. Every day the Trojan conducts operations at the Facilities without monitoring and reporting as required by the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. §1311(a). Trojan has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least August 15, 2012. These violations are ongoing, and CCAT will include additional violations when information becomes available, including

specifically violations of the 2015 Permit reporting requirements. *See* 2015 Permit, Sections XII, XVI.

**IV. Persons Responsible for the Violations**

CCAT puts Trojan on notice that it is the entity responsible for the violations of the Act described above. If additional entities or persons are identified as also being responsible for the violations described herein, CCAT intends to include those entities or persons in this action.

**V. Name and Address of Noticing Party**

Jane Williams, California Communities Against Toxics (CCAT)  
3813 50<sup>th</sup> Street West  
Rosamond, CA 93560

Please direct all communications to legal counsel retained by CCAT for this matter:

Jesse Swanhuyser, Anacapa Law Group, Inc.  
508 East Haley Street  
Santa Barbara, CA 93103  
(805) 689-1469  
jswanhuyser@anacapalawgroup.com

**VI. Penalties**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Trojan to a penalty of up to \$37,500 per day per violation for all violations occurring since March 2, 2012, up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CCAT will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

CCAT believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAT intends to file a citizen suit under Section 505(a) of the Act against Trojan, the Facilities and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAT would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAT suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as CCAT does not intend to delay the filing of a complaint in federal court.

Sincerely,

  
\_\_\_\_\_  
Jesse C. Swanhuyser  
Lawyer for CCAT

VIA U.S. CERTIFIED MAIL

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-001

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator  
U.S. Environmental Protection Agency Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Samuel Unger, Executive Officer  
LA Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013



**Exhibit A**

**STORM EVENT SUMMARY: Oct. 2012-Aug. 2017**  
**Days with Rainfall above 0.1 inches**

[[https://infoseek.wunderground.com/history/airport/KFUL/2012/1/3/MonthlyHistory.html?req\\_city=Santa%20Fe%20Springs&req\\_state=CA&req\\_statename=California&reqdb.zip=90670&reqdb.magic=1&reqdb.wmo=99999](https://infoseek.wunderground.com/history/airport/KFUL/2012/1/3/MonthlyHistory.html?req_city=Santa%20Fe%20Springs&req_state=CA&req_statename=California&reqdb.zip=90670&reqdb.magic=1&reqdb.wmo=99999)]

Stormwater Year	Date (mm/dd/yy)	Rainfall (inches)
2012-2013	10/11/12	0.14
	11/29/12	0.27
	<b>11/30/12*</b>	<b>0.28*</b>
	12/03/12	0.51
	12/13/12	0.24
	12/18/12	0.17
	12/24/12	0.55
	12/26/12	0.10
	12/29/12	0.18
	<b>01/24/13</b>	<b>0.57</b>
	01/25/13	0.11
	02/08/13	0.32
	03/08/13	0.62
05/06/13	0.42	
2013-2014	10/09/13	0.10
	11/21/13	0.25
	11/29/13	0.26
	12/07/13	0.21
	12/19/13	0.32
	<b>02/27/14</b>	<b>0.76</b>
	02/28/14	1.19
	03/01/14	0.24
	04/01/14	0.11
04/02/14	0.10	
2014-2015	11/01/14	0.25
	<b>12/02/14</b>	<b>0.58</b>
	12/03/14	0.22
	<b>12/12/14</b>	<b>1.18</b>
	12/17/14	0.24
	01/10/15	0.19
	01/11/15	0.50
	03/03/15	0.33
	05/08/15	0.11
05/14/15	0.26	
05/15/15	0.22	

2015-2016	07/18/15	0.14
	09/15/15	1.31
	10/04/15	0.10
	<b>12/22/15</b>	<b>0.24</b>
	01/05/16	0.89
	01/06/16	0.89
	01/07/16	0.56
	01/13/16	0.89
	01/31/16	0.31
	<b>02/18/16</b>	<b>0.11</b>
	03/06/16	0.37
	03/07/16	0.17
	03/11/16	0.28
	2016-2017	10/17/16
11/21/16		0.33
11/26/16		0.15
12/16/16		0.88
12/22/16		1.18
12/30/16		0.20
12/31/16		0.21
01/05/17		0.43
01/09/17		0.55
01/10/17		0.13
01/11/17		0.28
01/12/17		0.93
01/19/17		0.81
01/20/17		1.04
01/22/17		1.79
<b>02/06/17</b>		<b>0.61</b>
02/07/17		0.30
<b>02/17/17</b>		<b>0.48</b>
03/21/17		0.16
05/07/17		0.53

\*- lines in bold are dates on which Trojan sampled from at least one of the Facilities.